



## FALSE MEMORY SYNDROME FOUNDATION NEWSLETTER

JANUARY-FEBRUARY 1999 Vol. 8 No. 1

Dear Friends,

No one called in tears. What a contrast to previous years when the weeks before Christmas were the Foundation's busiest and most difficult. Desperate parents cried for help in getting through the holidays without their children. Telephone calls to the Foundation, in fact, showed a dramatic drop in 1998. While calls had been declining since 1995, the number of families newly accused on the basis of recovered memories is now no more than a trickle.

The vast majority of the many hundreds of new families who have called in the past year have concerns about young children and child-protective services. These are tragic stories, showing a system intended to protect children to be instead seriously out of control. But the Foundation remains focused on recovered memories, continuing the work we set out to do, lest that movement spring to life again.

What are the remaining problems? Those that we have mentioned many times: too many families not yet reconciled; the continued support by the therapy community for the belief system that fueled the recovered memory disaster; and the lack of an acceptable system to protect mental health consumers.

Evidence abounds for problematic beliefs within the mental health community: blaming problems on others outside the therapy setting and believing that current problems stem from childhood trauma. We need look no further than the writings of professionals in positions of authority. For example, Paul J. Fink, M.D., a past president and currently a trustee of the American Psychiatric Association went on record last November writing that psychotherapy—as he practices it—is incompatible with informed consent. He goes so far as to say that informed-consent would “destroy dynamic psychotherapy.”<sup>[1]</sup> Rather than reflect on the problems that brought about the recovered-memory fiasco, he incorrectly credited the FMSF for informed consent legislation and called the members of the FMSF scientific advisory board “some prestigious psychiatrists and psychologists who are trotted out by the FMSF to assert that we who practice this ‘vile form of alchemy’ called psychotherapy are, at best, unproven, and at worst, charlatans.” (When asked

about the alchemy quote, Dr. Fink failed to provide its source.)

Gerald P. Koocher, Ph.D., Harvard Medical School and a director (treasurer) of the American Psychological Association, sees the memory wars mainly as an effort of FMSF to silence therapists. “Not surprisingly, the most vocal attempts to silence competent professionals speaking out on or treating genuine abuse victims have come from organizations populated or led by individuals who have been ruled abusive or otherwise discredited in courts of law.”<sup>[2]</sup> That no one in a leadership position of the FMSF has ever been “ruled abusive or otherwise discredited in a court of law” doesn’t seem to matter, nor does balance. Koocher conveniently omits that to date the only person known to have been silenced is FMSF advisory board member Harold Lief, M.D. who was shouted down by a group from Carleton University psychology department at a presentation at McGill University.

As the editor of a special journal issue of *Ethics and Behavior*, Koocher cited the authors of several puerile attacks on the FMSF as “well-credentialed.” One of these was David Calof, a registered counselor in Washington whose highest academic credential is a high school diploma. Calof wrote: “For nearly 3 years proponents of the so-called FMS hypothesis—including members, officials, and supporters of the False Memory Syndrome Foundation, Inc. (FMSF)—have waged a campaign of harassment, defamation and psychological terrorism against me....” (p. 162) While it is not surprising that Calof views the recovered memory debate as a campaign by the FMSF of “psychological terrorism” against him personally—given his belief in

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### 1999 Newsletter Schedule

1 Jan/Feb; 2 March; 3 April/May; 4 June; 5 July/Aug;  
6 September; 7 Oct/Nov; 8 December

an intergenerational satanic cult that programs and threatens his clients—it is revealing that Koocher claimed that Calof's meanderings were "meticulously documented." In so doing, he conveniently overlooks the many errors and distortions. For example, the FMSF is not and has never been engaged in a "conspiracy of harassment and psychological terrorism," as Calof wrote. When Mr. Calof implied that this writer lied when she wrote about a "Mrs. Morris" he was wrong. When asked for the documentation for this statement by Calof, the editor failed to provide it. When Mr. Calof wrote that Michele Gregg "transcribed, edited and illegally distributed transcriptions" of his copyrighted material, he misstated the facts. Neither the editor nor the publisher, Erlbaum, seemed to feel an obligation to correct the record, an attitude that exemplifies the recovered memory movement: make an uncorroborated accusation, defame characters and leave it up to the accused to try to defend themselves.

As long as some professionals at the American Psychiatric Association and the American Psychological Association focus their efforts on attacking what they incorrectly believe the FMS Foundation stands for rather than doing something to solve the problems that brought about the existence of the FMSF in the first place, we have a job to do. Because the mental health profession has not satisfactorily addressed the fundamental problems that brought about our existence, either through a reevaluation of professional training or by increased monitoring, the courts are assuming the consumer protection function.

In December a decision by the New Hampshire Supreme court took a giant step toward holding some mental health professionals accountable by opening the door to third-party lawsuits in that state in specific circumstances: when an accusation becomes public because of encouragement, recommendation or instruction of the therapist and/or if publicized misdiagnosis results from the use of techniques not generally accepted in the mental health community or from the lack of professional qualification. Details of this important decision may be found in this newsletter.

The Foundation will adapt to the changing needs of FMSF families. Because families need less personal support, in the future we can put more effort into "watch dog" activities. Because families are no longer in crisis and there

are now many sources for information about FMS, we can reduce the number of newsletters this year. But educational efforts by all of us remain paramount. Within a few weeks all members will receive a new pamphlet: "Recovered Memories: What the Experts Say" that contains important excerpts from professional statements. This information needs to be distributed and thanks to the generosity of Upton Books, we will be able to provide you with as many copies of the pamphlet as you need.

As the new year begins, think about who still needs information about the devastation of the FMS problem and what you can do personally through educational efforts to help bring this tragic episode of psychiatric misadventure to an end.

*Pamela*

1 Fink, P. (1998, Nov.) "The Attack on Psychotherapy" *Clinical Psychiatry News*, p. 23.

2 Koocher, G. (Ed.) (1998) "Editor's Note" *Ethics & Behavior: Special Issue: The Science and Politics of Recovered Memory*, 8(2), 99-100.

3. Calof, D. (1998) "Notes from a Practice Under Siege: Harassment, Defamation, and Intimidation in the name of Science" *Ethics and Behavior*, 8(2), 161-187.



**THANK YOU** for your generous contributions to the Foundation's annual fundraising drive. Your support will enable us to continue the important work we have begun.

If you have forgotten to return your pledge, please take a few minutes to think how professionals now recognize what false memory syndrome is and how it devastates families. Try to imagine what it would have been like if there had been no one to call. Without your support, affected families, former patients, professionals, and the media will have no place to turn.

#### special thanks

We extend a very special "Thank you" to all of the people who help prepare the FMSF Newsletter. *Editorial Support:* Toby Feld, Allen Feld, Janet Fetkewicz, Howard Fishman, Peter Freyd, August Piper. *Research:* Michele Gregg, Anita Lipton. *Notices and Production:* Ric Powell. *Columnists:* August Piper, Jr. and Members of the FMSF Scientific Advisory Board. *Letters and information:* Our Readers.

#### HAVE YOU WRITTEN YET ?

American Psychiatric Association  
Steven Mirin, M.D., Executive Director  
1400 K Street NW, Washington, DC 20005

American Psychological Association  
Raymond Fowler, Ph.D., Chief Executive Officer  
750 1st St. NE, Washington, DC 20002

"Medical history is replete with flawed remedies..... Mistakes, after all, are the price of progress. In history's final verdict...analysts will incur culpability not because their theories were vacuous but because they 'took pains to insure that critical voices would not be heard.'"

Thomas Lewis, December 6, 1998

*San Francisco Examiner*. Review of *Madness on the Couch: Blaming the Victim in the Heyday of Psychoanalysis* by Edward Dolnick. NY: Simon & Schuster

## Identity of Sybil Revealed

FMSF Staff

The best-selling book *Sybil* was published in 1973. That book and the 1976 movie starring Sally Field as Sybil and Joanne Woodward as Dr. Cornelia Wilbur helped to popularize multiple personality disorder.

Sybil was a patient of Dr. Cornelia Wilbur and the book was written by Flora Rheta Schreiber. Wilbur died in 1992 and Schreiber in 1987. Before *Sybil*, MPD was not considered to be a result of child abuse. Before *Sybil*, MPD was considered rare—it was not even listed in the *Diagnostic and Statistical Manual* of the American Psychiatric Association. According to the December, 1998 *New Yorker*: “[Sybil, Wilbur and Schreiber] are responsible for shaping the modern notion of multiple personality disorder, and *Sybil*—whose royalties they split three ways—became the movement’s bible. Before 1973, there were fewer than fifty known cases of MPD; by 1995, more than forty thousand had been diagnosed, prompting skepticism in the mental-health field.”<sup>11</sup>

The *Sybil* story has come under scrutiny in recent years. In April 1997, the *New York Review of Books* published an interview with Dr. Herbert Spiegel who was at one point involved with Sybil’s therapy when she was a patient of Wilbur.<sup>12</sup> Spiegel said that in his opinion Sybil was not a multiple personality but instead a suggestible hysteric. (See FMSF Newsletter May 1997) In August, 1998 Robert R. Reiber, Ph.D.—after listening to long-forgotten audiotapes of conversations between Wilbur and Schreiber—argued that the story of Sybil was a fraud. (See FMSF Newsletter December 1997) “It is clear from Wilbur’s own words that she was not exploring the truth but rather planting the truth as she wanted it to be,” he said. (quoted in *New Yorker*) However, Reiber thinks that this was as “much self-deception as deception

of others.”<sup>13</sup>

The most recent information about Sybil comes from Peter Swales, a literary critic who has exposed the true names of a number of Freud’s patients, and Mikkel Borch-Jacobsen, a professor of literature at University of Washington. Swales and Borch-Jacobsen have identified Sybil as Shirley Ardell Mason, born in Minnesota. While the book indicated that Sybil separated from her therapist after her eleven-year analysis, that appears to be false. When Dr. Cornelia Wilbur moved to Lexington, Kentucky to become a professor of psychiatry at the University of Kentucky, Shirley Mason followed her there from New York. Dr. Wilbur left Mason \$25,000 in her will. Mason died last February at age seventy-five. According to Mason’s former neighbor in Lexington, Mason and Dr. Wilbur were very close friends. “When Dr. Wilbur wasn’t there, Ms. Mason was at Dr. Wilbur’s house.”

Swales and Borch-Jacobsen are not the only people to have discovered the identity of Sybil. A Lexington art collector named Mark Boultinghouse bought a number of Mason’s paintings after her death. Twenty-seven of these paintings were on sale at a recent New York Antiques Show.

Borch-Jacobsen is coauthoring a book about Sybil and Swales and Borch-Jacobsen are working on a documentary called “Sybil: Who’s Who?”

1. Boynton, R. S. (1998, Dec. 28) “Who was the real Sybil? The New York Antiques Show holds the key.” *New Yorker*, p. 39-40.

2. Associated Press (1998, Dec. 22) “Historian: Famous psychiatric patient might be former Minnesotan.”

3. Borch-Jacobsen, M. (1997, April 24) “Sybil—The Making of a Disease: An interview with Dr. Herbert Spiegel.” *New York Review of Books*, p. 60-64.



“Most therapies result in remission of symptoms, or improvement, or no change. ‘Recovered memory’ therapy is the only one I know of that makes troubled people feel worse.”

Cam Perry, *Vicissitudes of Memory*, 10-18  
*Quadrant*, No 350, Vol. XLII (10), October 1998

## Grannies Take a Stand

Liz LaPlante of Des Plaines and Mattie Zimmerman of Schaumburg, Illinois caused a stir on the Northwestern campus in October leading to a front page story in the student newspaper. LaPlante and Zimmerman went to Northwestern to hand out information outside the meeting place of a controversial conference featuring psychiatrist Judith Herman that was sponsored by the Women’s Center.

The women, both grandmothers, called the university for permission. As a result they were closely watched by eight Northwestern University Police officers requested by the conference organizers. According to the student paper, Herman said that the officers were necessary because of the threats and intimidation that often accompany her line of work.

Both Zimmerman and LaPlante have children who underwent recovered-memory therapy and subsequently accused their fathers of sexual abuse. “This is part of the hysteria involved,” Zimmerman said. “Here we are, two little grandmothers, and they are calling out the troops.”

The conference, “Trauma: The Challenge of the Enlightened Witness,” was attended by about 150 people. Zimmerman and LaPlante said that they took this action because they wanted to alert students to the possible effects of recovered memory therapy. “We are just devastated for our children and all the vulnerable people who may be here and not asking any questions. If we can cause one person to investigate this and doubt this, we have accomplished what we came to do.”

According to the student paper,

Herman defended the therapy, likening it to feminist and abortion movements because it liberates woman. She said that convincing patients they were abused in their childhoods when they were not would be very difficult. She also said that "We need to safeguard against the wrongly accused. I approve of raising questions about this. But coercive manipulation is also how perpetrators can bully their victims into retracting their statements."

LaPlante and Zimmerman said that they had written to Northwestern administrators asking that the conference attendees also hear the side of parents whose children accused them of abuse after they had gone through therapy. Zimmerman said she received a letter from the administrators stating that they considered the conference to be balanced. Zimmerman said that "Now they have a moral responsibility to show the other side, to have a conference with the experts."



### Amirault Decision Challenged

On January 6, 1999, the organization One Voice filed an amicus curiae brief with the Massachusetts Supreme Judicial Court arguing that the victims in the Cheryl Amirault (Fells Acre) case be allowed to testify. In 1997, Judge Borenstein overturned the conviction of Cheryl and her now deceased mother Violet and ruled that because the testimony of the children in the day care case was forever tainted by suggestive questioning, they should not be allowed to testify in any future retrial. Prosecutors appealed Borenstein's decision.

In a press release on January 7, One Voice president Sherry Quirk claims that the Bruck and Ceci research on children's suggestibility on which Judge Borenstein relied was not "newly discovered." She writes, "Our searches turned up examples of case law more than a decade old in which children's suggestibility was

argued by the defense."<sup>[1]</sup> A number of organizations have cosigned the amicus, from the Alabama Coalition Against Rape to The Victim Center. Individual signers include Kathleen C. Faller, Alan Schefflin and Charles Whitfield. No researchers or research organizations appear to be represented by the signers.

(See FMSF Newsletter July/Aug. 1998 for description of Borenstein decision).

1. *Editor's comment:* This implies that avoiding suggestive questioning was the standard at the time. It is unclear why Quirk would then argue that tainted testimony should be allowed. Quirk's position was forcefully argued by the prosecution at trial and was rejected by Judge Borenstein.

Readers interested in the admissibility of children's testimony may obtain copies of the Borenstein decision by ordering Brief Bank #197; the amicus brief written by Stephen Ceci in the Kelly Michaels case, #821; and the decision in the Kelly Michaels case #214.



### Continuing Education Watch

*"At first I thought this was a joke, but its not. Do you know anything about this. What is "regression" sans hypnosis business?"*

This comment was forwarded from the internet. It was made about a notice for a program in "Traumatic Incident Reduction" (TIR) for which APA-approved continuing education credits were available. According to the notice:

TIR is a technique which is used to help clients eliminate the unwanted negative effects of traumatic incidents in their lives. Basically, this method uses regression (without hypnosis) to assist the client in looking at what happened and how/why it is affecting them in unwanted ways. The client finds answers from within themselves, as opposed to many methods where the therapist evaluates the client's situation for her/him.

The workshop is scheduled for

January 19-22, 1999 (4 days) from 9:00-4:00. \$595.00 Student \$395.00.

TIR is one of a number of therapies that are called "power therapies." But TIR is "not an approach that directly addressed the bio-energetic field." (See FMSF newsletter October 1998.)

And what is "Bio-Energetics"? Eva Reich, daughter of Wilhelm Reich, is a retired physician in Maine developed Bio-Energetics.<sup>[1]</sup> In her practice she had observed that touch therapy worked on all ages to melt stress and release memories of primal experiences and she then did workshops around the country. Her father, Wilhelm is best known for his work with orgonomy, an attempt to measure "orgones," units of cosmic energy. His commercialization of the orgone box brought him into conflict with government authorities in the early 1950s. He was convicted of contempt of court and died in prison.<sup>[2]</sup>

1. Currie, C. "How to calm your baby's constant crying with the butterfly touch" *Asheville Citizen-Times*, October 28, 1998, Lifestyle page D1

2. "Reich, Wilhelm" Britannica Online, <http://www.eb.com:180/cgi-bin/g?DocF=micro/498/40.html>. [Accessed 18 January 1999].

*"It has now come to the point where I am unable to distinguish between what is parody and what is actually going on in psychology."*

Another internet comment, this one made in reference to the following actual program:

"Hi Traumateers! I wanted to take a brief minute to let list members know that we (Traumatology Institute @ FSU under the direction of Charles Figley, Ph.D.) have developed a curriculum of training which results in certification as "Compassion Fatigue Specialist..."

The training appears to be "for treatment with other clinicians and care-givers." "Clients and trainees, including the Federal Bureau of Investigation, have provided a hearty endorsement." □

## TWO ARTICLES OF INTEREST TO THE LEGAL PROFESSION

Allen Feld

Attorneys who are representing retractors and parents may find two articles that appeared in December to be of special interest.

"Tales of Sexual Panic in the Legal Academy" by Edward Greer [1] is a comprehensive critique of Cynthia Grant Bowman and Elizabeth Mertz's [2] position that falsely accused fathers should have no legal remedy against therapists, even if the accusations are a result of a therapist's intervention. Instead, Bowman and Mertz suggest that fathers should sue their accusing daughters. The Bowman and Mertz article is often cited in legal briefs by those antagonistic both to the Foundation and to the legal interests of members and retractors.

Greer shows how Bowman and Mertz misuse the successful Ramona 3rd party case. He goes on to demonstrate why it is essential that parents have access to the courts to sue their accusing daughter's therapist, if they choose. Greer also challenges Bowman and Mertz's use of *Sullivan v. Cheshier* to justify the political position they have taken. Attorneys may find Greer's well-reasoned examination of the Bowman and Mertz position helpful in defending parents' access to the courts.

"The Scientific Status of Research on Repressed Memories" [3] by Harrison G. Pope, Jr., Paul S. Oliva and James I. Hudson is a long-awaited paper reviewing 33 studies of various traumatic events (i.e. fires, various explosions, holocaust survivors, Mt. St. Helens, children in surgery or who witnessed violence and so forth) conducted between 1960 and 1996. Presented in table format, the analysis clearly demonstrates that claims of amnesia for traumatic events are rare and typically associated with a physical incident or have a biological expla-

nation. In fact, the three studies that mention amnesia for trauma present no scientific basis to support the concept of repression. Two of these alleged examples of amnesia could be more easily explained by physical insult (a lightning strike and a fire that resulted in "blood carbon monoxide levels 'sufficient to kill'") and the third by the age of the children (childhood amnesia).

The authors explore the scientific reasons why several often cited studies of child abuse fail to support the claim that repression exists. Members of the bar will find this article useful in dealing with the issue of repression.

1. Greer, E. (1998) Tales of sexual panic in the legal academy. *Case Western Law Review*, 45, 513-558.

2. Bowman, C. & Mertz, E. (1996) A dangerous direction: Legal intervention in survivor therapy. 109 *Harvard Law Review*, 549.

3. Pope, H.G., Oliva, P.S. & Hudson, J.I. (1999) The Scientific Status of Research on Repressed Memories. In (Faigman, D.L.; Kaye, D.H.; Saks, M.J. and Sanders, J., Eds.) *Modern Scientific Evidence: The Law and Science of Expert Testimony*, Volume 1, St. Paul, MN: West Group 112-155.

### Moral Panics and the Social Construction of Deviant Behavior: A Theory and Application to the Case of Ritual Child Abuse

Jeffrey S. Victor

*Sociological Perspectives* 41(3): 541-565

Victor uses current information about criminal accusations of ritual child abuse by secret, satanic cults to explain forms of collective behavior previously labeled panics, scares and persecutions. He notes: "Moral panics are a product of sociopolitical processes and not psychological characteristics of individuals, such as suggestibility, a disposition to fantasize, delusions, or personal anxieties. The implications of this concept sharply differ from psychiatric concepts, such as 'mass hysteria' or 'emotional contagion'. Psychiatric concepts focus upon emotionality (labeled as 'irrational')."

In contrast, the concept of moral panic focuses upon cognition and communication behavior." A sociological perspective shows how difficult it is for "individuals to challenge the conformity pressures that enforce consensual beliefs within their own social networks."



### Editorial Opinion

How can a court handle cases which may have been reduced by time to what is fundamentally a he said/she said scenario? Proof of guilt beyond a reasonable doubt can be all but impossible when, unsupported by corroborative evidence, the vagaries of human memory render tenuous testimony about decades-old events.

Recently, courts have become embroiled in debates over the validity of amnesia claims, recovered memories, false-memory syndrome and other quirks of the human mind.

We all know the paths long-ago events take in our memories. They fade and we pick up the crayons and colour them in again a little brighter than before and in slightly different hues. The edges unravel and we embroider them anew. Faces blur, events jumble and rearrange themselves, the timbre of voices heard long ago is lost forever and when we try to pin down distant details they dissolve into shimmery pools of doubt.

Remembering is not a simple, straightforward act. It is reconstruction, and in that subconscious tearing down and building up, events are altered and scenes subtly shift. Some memories are erased, others created.

*Calgary Herald,*  
November 16, 1998

## NEW BOOKS

### When Is It Legitimate to Help People Remember

Lena Hellblom, Ph.D.

A concept known as "cognitive interviewing" is recommended in a new Swedish book, *Advanced Interrogation-and-Interview Methods* (Natur och Kultur, Stockholm 1998) by memory researcher Sven-Åke Christiansson and two of his students. The cognitive method is used to help witnesses remember by establishing similarity between the encoding and interview situations, by not demanding a strict time schedule and by encouraging a shift of perspectives. The presentation of the method is correct, but combined with the writer's beliefs about amnesia and remembering, it is likely to be misused.

The book is recommended by the director of the Swedish criminal police for use in the training of policemen nationwide. I hope that does not happen because of the author's speculations about human memory. I quote:

"If an experience is so traumatic that you cannot get mental control over your experience, this can lead to dissociative reactions, and sometimes to following problems with remembering the event."

The combination of the cognitive method with unscientific speculations about repression/dissociation is very dangerous. It legitimates policemen and others helping those they question to remember events that may never have happened.

In the book MPD is presented as a form of psychogenic amnesia, that in turn is explained as a defense dissociative reaction, which gives rise to a state where you do not have access to your memories. Christiansson teaches that not only the victims, but also the perpetrators, can dissociate (my translation):

"In the cases where you have perpetrators with psychogenic amnesia you

can see a tendency to a certain behavior. It's often individuals that during their childhood have not been confirmed by their parents, never have considered themselves as seen and therefore have learned to shut off the feeling of abandonment and deceit that was the consequence. Following this they learned how to establish and master a behavior that implies that they can shut their feelings on and off as they apprehend the situation calls for that kind of defense reaction. Therefore, they can commit serious crimes and shut off the actions from their consciousness by help of the automatic shut off they so cleverly handle."

The argument is circular: It takes time to remember, therefore the best way of interrogating is to question repeatedly and to have long sessions.

When giving lectures to policemen and social workers and when interviewed in the press, Christiansson has stated that it is necessary to put leading questions to a child in order to get the child to tell about trauma. Christiansson's recommendations are against Swedish and international recommendations for interrogation and must be questioned based on everything we know about suggestibility.

However, the debate is not about rational arguments. A police officer attending an international seminar on true or false memories in Stockholm in June 1998 provided an example of what is actually occurring. She said that she "believed in repression." To hear her now say, after having read this new book, that she "believes in dissociation" is no improvement.

Lena Hellblom Sjögren, Ph.D., is a licensed psychologist in Sweden.



### Why Some Families Chose to Picket FMSF STAFF

*Behind the Barrier* by Susan Hoxter opens with a quote that sets the stage for the American tragedy of the 1990s:

"Rachel is weeping for her children, and she cannot be comforted, for they are gone. But the Lord says: 'Don't cry any longer, for I have heard your prayers and you will see them again; they will come back to you from the distant land of the enemy.'" Jeremiah 31:15-16

This tragic saga of a Seattle, Washington family begins when a woman turns to the wrong therapist at a vulnerable time in her life. In what is now an all too familiar scenario, the woman recovered "memories," accused her father, and even had her own children taken from her and placed in foster care. Written by the mother of the victim, the story describes a women's shelter that did not do its job, a child protective service more interested in protecting itself than children, and a regulatory board that seems not to care what is going on.

For many readers, this book provides an explanation for why a small determined group of people in Seattle decided to picket. The author explains:

"Once a finger has been pointed: You are accused; You have been symbolically charged; You have been tried; You have been convicted; and You have been sentenced and destroyed. (After all, something must have happened!)"

"You never have an opportunity to confront the therapist. You are forbidden to talk to the accusing child. You are told that the only way to put your family back together is to confess. (How can someone confess to something he or she did not do?)"

"We are totally frustrated, confused, depressed and ashamed. We have nowhere to turn. It is impossible to prove that something didn't happen 35 years ago. A few of us have tried to go to court, but a typical retainer fee is \$150,000. Justice is far too dear for most of us."

"What can be done except picket?"

(Edmonds, WA: Downey Press, Price \$25.00 includes shipping and handling) Contact FMSF for ordering information.

## STATUS OF THIRD-PARTY MALPRACTICE SUITS

### New Hampshire Supreme Court:

#### Therapist Owes a Duty to Accused Parent

*Hungerford v. Jones*, 1998 N.H. LEXIS 94, December 18, 1998.

What recourse does an accused person have against false allegations of sexual abuse believed to result from suggestive intervention by a mental health professional? Specifically, does the therapist have a duty to avoid the use of suggestive techniques known to create false memories, to consider available information which contradicts the developing beliefs, and to follow professional guidelines which exhort therapists not to accept "repressed memory" images as true without external corroboration? Should that therapist be held liable for damages when her patient acts on false memories developed in therapy, especially if civil or criminal charges are filed? Should the therapist be held accountable to an injured third party if she "validates" allegations of sexual abuse she knows to be of questionable truth to others or in court? These are the questions often raised in third-party suits.

At the time of this writing, this area of law is still in its infancy. Almost half of the nearly 160 third-party cases identified by the FMSF have not yet been resolved. At least six malpractice cases are currently on appeal, and the issue of whether a mental health care worker owes a duty to a third party rests squarely before each court. These courts are expected to consider whether the foreseeability of the harm to the accused and the fact that the accused person was directly injured by the allegations which developed during therapy are sufficient to generate a duty. In addition, courts may consider the characteristics peculiar to so-called repressed memory therapy which often create a special relationship with the person newly accused of a criminal act. The courts are also expected to consider several public policy issues to balance the need to protect abuse victims' rights with the need to protect citizens from falsely made criminal charges.

Given the potential of grave injury to a falsely accused individual, several courts—most recently the New Hampshire Supreme Court (*Hungerford v. Jones*, 1998 N.H. LEXIS 94) have held that a therapist does have a duty to the accused person "throughout the therapeutic process." The New Hampshire Supreme Court concluded that a therapist owes a duty of care when diagnosing and treating an adult patient for sexual abuse<sup>[1]</sup> and that "the severity and likelihood of harm is compelling and clearly foreseeable when false accusations of sexual abuse arise from misdiagnosis."

No one disputes that a false allegation of criminal sexual molestation would directly and foreseeably endanger the accused person's reputation and cause serious injury and damage. The New Hampshire Supreme Court held that the duty arises from the need for protection against reasonably foreseeable harm:<sup>[2]</sup>

Even when such an accusation is proven to be false, it is unlikely that social stigma, damage to personal relationships, and emotional turmoil can be avoided. In fact, the harm caused by misdiagnosis often extends beyond the accused parent and devastates the entire family. Society also suffers because false accusations cast doubt on true claims of abuse, and thus undermine valuable efforts to identify and eradicate sexual abuse. (citations omitted)

In addition, the court identified four circumstances alleged in *Hungerford* which magnify the potential for harm: 1) when the accused person is the patient's father; 2) when the therapist lacks appropriate experience and qualifications; 3) when the therapist uses a psychological phenomenon or technique (such as repressed memories) that is not generally accepted and has been criticized as being suggestive and resulting in false memories; and 4) when the therapist takes public action based on the false accusations or encourages patients to do so.

The characteristics of recovered memory therapy singled out by the New Hampshire Supreme Court as "exponentially compounding" the potential for harm to an accused parent are peculiar to repressed memory therapy. It has been noted that recovered memory therapy, unlike other therapy practices, creates a special relationship between the therapist and the accused third party. Not only does the third party—often a close family member—find himself accused of a heinous crime, but he may also face denunciations, sometimes public or legal, purportedly undertaken for their "therapeutic" value. For example, the defendant therapist in *Hungerford* contacted police to "validate the truth" of her patient's recovered memories of assault by Hungerford and encouraged his prosecution as a means of "empowering" her patient. Under these circumstances, the New Hampshire Supreme Court concluded, "a therapist's diagnosis...consists of a conclusive determination concerning the suspected abuser as well as the patient, regardless of the accused's involvement in the therapy process." (emphasis added) In fact, the frequency with which therapists working in this area use certain suggestive techniques and recommend family confrontation, "detachment" from family members, and litigation has led many professional organizations, ethics panels, and clinicians to offer new safeguards and standards of practice.

Practice guidelines set forth by professional organizations in the United States and abroad have been reviewed in earlier editions of this newsletter. In general, the statements



note the "raging debate" in the scientific field over the reliability of repressed memories and conclude that there is currently no expertise available with which to determine the truth of a particular repressed memory without corroboration. Therapists are instructed to take care to avoid inappropriate use of leading questions, hypnosis, narcoanalysis, or other memory enhancement techniques directed at the production of hypothesized "hidden" or "lost" material. Therapists are also cautioned that repressed memories, however emotionally intense and significant to the individual, do not necessarily reflect factual events. Therapists are further encouraged to discuss these cautions with their patients — especially if the patient intends to take action outside the therapeutic situation. Meeting these professional guidelines is not believed to limit the effectiveness of therapy or to pose too great a burden on the therapist.

Nevertheless, one common defense argument asserts that any extension of a therapist's duty beyond the patient to a third party would be unreasonably burdensome because it would cause therapists to be overly concerned about the possible impact of their actions on some third party who was not a patient. In addition, defendants often argue that imposing a duty to a third party would have a chilling effect on the treatment and reporting of child abuse and is, therefore, contrary to public policy. The Illinois Supreme Court accepted this argument.<sup>[3]</sup> In June 1998, it dismissed a third party malpractice claim brought by an accused father against his adult daughter's psychologist. The majority expressed concern that allowing the action would improperly enlarge a physician's duty of care and would be inconsistent with the therapist's duty of confidentiality to his or her patient. A strongly worded dissent, however, said that the majority failed to see "what this case is about at all." The dissent felt that the majority's focus on protecting medical providers from liability to some indeterminate class of non-patients is misplaced. The accused person in this case, the dissent noted, was used as a tool in the plaintiff's treatment program; the therapist specifically arranged to have him join the patient's therapy sessions and did so with the patient's consent. The dissent concluded that the damage to the accused father was foreseeable and while "[t]he likelihood of injury was great, the burden of guarding against that injury was slight, and there would be no adverse consequences from placing that burden on the therapist."

In March 1998, a Wisconsin appeals court refused to dismiss a third-party claim and concluded that allowing recovery by a third party for psychological harm due to negligence would not put too great a burden on the therapist.<sup>[4]</sup> Despite defendant therapist's argument that she had no duty to determine the truth of what her patient was saying, the court held that the therapist did have a duty to ensure that her therapy did not cause foreseeable harm to others. This

## FMSF Legal Survey of Third-Party Suits

As of December 1998, the FMSF Legal Survey included 158 malpractice claims brought by a third party against a mental health provider for alleged encouragement of a false memory.<sup>[6]</sup> This number is likely an underestimate of the total number of similar suits. Fifty-nine suits were brought by the parents of adult patients who allege their son or daughter was led, through negligent therapy practices, to falsely believe they had been abused as a child. Ninety-nine suits were brought by an accused parent of a minor child. In many of these suits, the parent claims that through suggestive interview techniques a minor child was led to make false allegations which often resulted in criminal charges against a parent.

Most third-party lawsuits allege malpractice and/or negligence. Some also alleged intentional and/or negligent infliction of emotional distress, loss of society and companionship, public nuisance, breach of contract, abuse of process, invasion of privacy, fraudulent misrepresentation, or defamation. Copies of court documents from many of these suits are found in the FMSF Brief Bank. In the first "repressed memory" third-party suit to go to trial, Ramona v. Isabella, No. C61898, Superior Court, Napa Co., Calif., a father successfully sued his daughter Holly's therapists for implanting false memories of sexual abuse. Immediately following his daughter's accusations of sexual abuse, Mr. Ramona suffered the breakdown of his marriage and family, loss of his job, and civil charges of child sexual abuse. The trial court recognized that, as a matter of public policy, the defendant therapists owed a legal duty of care not only to the patient but to the patient's immediate family. In May 1994, the jury awarded Mr. Ramona half a million dollars and specifically found the defendants to be "negligent in providing health care to Holy Ramona by implanting or reinforcing false memories that plaintiff had molested her as a child."

Of the few third-party suits that have gone to trial, nearly three-quarters have ended in a jury verdict in favor of the injured third party. Some higher courts have held that under certain circumstances a duty may be owed.<sup>[7]</sup> Other courts have dismissed claims holding that no duty is owed a third party<sup>[8]</sup> or that the third-party claim was time-barred.<sup>[9]</sup>

A number of third-party claims filed by an accused parent of a minor child have been dismissed when the court held that the therapist's actions were protected from liability by statutes mandating the reporting of suspected child abuse. Other appellate courts have allowed such cases to go forward, holding that defendants' actions went beyond those protections for reporting in good faith.<sup>[10]</sup> These courts held that negligent or reckless actions independent of the reporting are subject to the same standards applied to other members of society and rejected a policy of "blanket immunity" for all therapists' actions.



ruling has been appealed to the Wisconsin Supreme Court. In April 1998, a Pennsylvania appellate court upheld a jury award and held that a duty was owed to the accused parents as well as the defendant therapist's patient.<sup>15</sup> The Pennsylvania court emphasized that there is no social interest in shielding negligence which leads to false allegations:

While we recognize that great social utility arises from allowing therapists to diagnose sexual abuse, no social utility can be derived from shielding therapists who make cavalier diagnoses that have profound detrimental effects on the lives of the accused and their family.

Similarly, the New Hampshire Supreme Court in Hungerford disagreed with the argument that therapists would be discouraged from performing sexual abuse evaluations of children out of fear of liability to the persons whose conduct they may implicate. "This reasoning," the court wrote, "overlooks the fact that the standard of care by which a therapist's conduct is measured is not heightened." The court explained:

Imposing a duty of care on therapists who elect to publicize accusations of sexual abuse against parents, or who encourage patients to do so, should not unreasonably inhibit sexual abuse diagnosis or therapy. Recognizing such a duty where parents are implicated, however, should result in greater protection for parents and families from unqualified therapists or unaccepted therapeutic diagnoses. While imposition of this duty may impair societal efforts to bring some sexual abusers to justice, we recognize its need due to the increased foreseeability and devastating consequences of publicized false accusations against parents.

The Hungerford court went on to cite the Pennsylvania ruling with approval, and concluded that, under the circumstances, allowing a duty to a third party imposes "no more [duty] than what a therapist is already bound to provide—a competent and carefully considered professional judgment. Because the therapist is in the best position to avoid harm to the accused parent and is solely responsible for the treatment procedure, an accused parent should have the right to reasonably expect that a determination of sexual abuse, touching him or her as profoundly as it will, will be carefully made."

1 The New Hampshire Supreme Court, State v. Hungerford, 697 A.2d 916, had in 1997 examined the reliability of the repressed memory claims made by

Hungerford's adult daughter and the therapeutic technique used by her therapists. At that time the New Hampshire Supreme Court concluded that the phenomenon of recovery of repressed memories is not reliable and the criminal charges against Mr. Hungerford were subsequently withdrawn.

2See also, Sawyer v. Midelfort, 579 N.W.2d 268 (Wisc. App. 1998) ("Society's justifiable repugnance toward [sexual abuse of a child]...is the reason why a falsely accused [person] can be gravely harmed"); Caryl S. v. Child & Adolescent Treatment, 614 N.Y.S.2d 661, 666-67 (Sup. Ct. 1994) (It is indisputable that "being labeled a child abuser [is] one of the most loathsome labels in society" and most often results in grave physical, emotional, professional, and personal ramifications); Zamstein v. Marvasti, 692 A.2d 781, 794 (Conn. 1997) (Berdon, J., dissenting, noting that therapist's negligent diagnosis of sexual abuse could destroy relationship between accused parent and child).

3 Doe v. McKay, 700 N.E.2d 1018 (Ill., 1998).

4 Sawyer v. Midelfort, 579 N.W.2d 268 (Wisc. App. 1998).

5 Althaus v. Cohen, 710 A.2d 1147 (Pa. Super. 1998). The Althaus court noted that the psychiatrist specifically treated the daughter for parental sexual abuse, that the parents were directly affected by the psychiatrist's negligent misdiagnosis and treatment when criminal charges were filed against them, and that it was foreseeable that the parents would be harmed by the negligence. The court noted that the psychiatrist knew at least some of the girl's allegations were not true, but she "essentially validated...unwittingly false testimony" during and before the criminal proceedings. "Dr. Cohen became deeply enmeshed in the legal proceedings against the Althauses and, in doing so, placed herself in a role that extended well beyond the therapeutic treatment context," the majority wrote. "However, because she chose to take this active role, the Althauses, as alleged child abusers,

had a reasonable expectation that Dr. Cohen's diagnosis of [their daughter] affecting them as it did, would be carefully made and would not be reached in a negligent manner." The appellate decision has been appealed to the Pennsylvania Supreme Court.

6 In addition to these third-party suits, the FMSF Legal Survey contains records of over 50 related actions taken by the accused person. They include wrongful death suits brought by accused family members after an adult child committed suicide while under the care of a therapist providing treatment for recovered memories; defamation actions against the accuser and/or her therapists; and other miscellaneous suits. A few third-party claims have been filed as cross-complaints, most of which were dropped or dismissed at the same time the original "repressed memory" suit was dropped.

7 Hungerford v. Jones, 1998 N.H.

LEXIS 94, dated December 18, 1998; Althaus v. Cohen, 710 A.2d 1147 (Pa. Super. 1998), cert. granted; Sawyer v. Midelfort, 579 N.W.2d 268 (Wisc. App. 1998), cert. granted; Tuman v. Genesis Assoc., 894 F.Supp. 183 (U.S. Dist., 1995); Sullivan v. Cheshire, 846 F.Supp. 654 (U.S. Dist. 1994).

8 Doe v. McKay, 700 N.E.2d 1018 (Ill., 1998); Flanders v. Cooper, 706 A.2d 589 (Me. 1998); Strom v. C.C., 1997 Minn. App. LEXIS 327, unpublished.

9 Glasspool v. Selzer, Superior Court, Appellate Div., New Jersey, No. A-1662-95T5, unpublished; Lundgren v. Eastern Montana Community, 1998 Mont. LEXIS 62.

10 James W. v. Superior Court (Goodfriend), 21 Cal. Rptr.2d 169 (Cal. App., 1993); Wilkinson v. Balsam, 885 F.Supp. 651 (U.S. Dist., 1995); Montoya v. Behense, 761 P.2d 285 (Colo.App., 1988); Peterson v. Walentin, 1995 U.S. Dist. LEXIS 4290; Caryl S. v. Child & Adolescent Treatment, 614 N.Y.S.2d 661 (1994); Byrnes v. Haynes-Seman, No. 93-CV-3125, Court of Appeals, Colo.



## **Criminal Trial Against Texas Therapists Continues**

United States of America v. Peterson, et al., U.S. Dist. Ct., Southern Dist., Texas, No. H-97-237.<sup>11</sup>

A federal criminal trial resumed January 5, 1999, in which five former employees of a Houston private mental hospital are charged with insurance fraud. Prior to a 3-week holiday break, 14 weeks of trial testimony from some 28 witnesses had been heard. The defendants face 61 criminal counts alleging that from 1991 to 1993, they used hypnosis, drugs, isolation and other techniques during which patients allegedly recovered memories of participation in cult ritual abuse. The indictment also alleges that these techniques were used as part of a conspiracy to unnecessarily prolong patient hospitalization so as to continue to collect insurance payments. The defendants are all associated with the former Spring Shadows Glen mental hospital: psychologist Judith Peterson, psychiatrists Richard Seward and Gloria Keraga, therapist Sylvia Davis, and former hospital administrator George Mueck.

<sup>11</sup> This report is taken from a series of articles by Mark Smith appearing in the Houston Chronicle. See also FMSF Brief Bank #176 and FMSF Newsletters. For the latest trial developments, check the website: <http://www.FMSFonline.org>



## **Souzas Won't Go to Prison, But Still Under House Arrest**

Shirley, 66, and Ray Souza, 67, who have been under house arrest since their 1993 child abuse conviction, will not go to prison. Instead they were ordered placed on probation and confined to their house for a total of nine years. The ruling is retroactive to May 10, 1993. They must, therefore, serve another 3 years under house arrest. On December 11, 1998, Massachusetts Superior Court Judge Elizabeth Dolan, who presided over the Souza's nonjury trial, revoked the couple's original prison sentence of 9 to 15 years in prison.

The Souzas' ordeal began in the late 1980's when the couple's youngest child, an adult, went into therapy and had a dream which her therapist interpreted as a "recovered memory." Eventually, accusations were made that the Souzas had abused two of their young grandchildren. The Souzas have maintained their innocence throughout the case. They were represented in their appeals by Kevin Nixon of Boston and Daniel Williams of New York.



## **Illinois Appellate Court Reverses Earlier Ruling re: Applicability of Discovery Rule**

Ferrer v. Kuhl, et al and Clay v. Kuhl, et al, 1998 Ill.App. LEXIS 864, Nos. 2-98-0164 and 2-98-0179 cons, dated December 18, 1998.

In December 1998, an Illinois Appellate Court held that the Illinois common law discovery rule applies to toll the

statute of limitations in childhood sexual abuse cases when the victim represses memories of the abuse. In doing so, the court disagreed with an earlier ruling<sup>12</sup> in which it had determined that the discovery rule did not apply to repressed memory claims. The court referred to an expert statement submitted by the plaintiffs when it indicated that it accepts the claim that victims of childhood sexual abuse often do not realize the causal connection between their present psychological injuries and the past abuse.

The facts of the case as summarized by the appellate court indicate that there is some question as to whether the claims presented are actually of "repressed memories." Plaintiff Clay, age 28, made a Type 1 claim, that she was unable to realize the causal connection between her psychological problems and the abuse for a period of 23 years. Plaintiff Ferrer, age 29, also claimed that she was unable to understand that the sexual encounters caused her injury until 15 years after the abuse ended. She further stated that after the realization of the causal connection, she remembered additional incidents of abuse that she had not previously recalled.

This ruling highlights inconsistencies in application of Illinois statutes by that state's appellate courts. An appeal is expected.

<sup>12</sup> M.E.H. v. L.H., 669 N.E.2d 1228 (1996), aff'd, 685 N.E.2d 335 (Ill., 1997). In 1996, the appellate court held that the law presumes that a person is on notice of injury as soon as it occurs and that the discovery rule does not apply to repressed memory claims. The Illinois Supreme Court affirmed dismissal and held that the 12 year statute of repose had expired. However the Supreme Court sidestepped the issue of whether the discovery rule applied.



**Editor's Comment:** Allegations like the following highlight the need to apply an objective standard to cases filed after a significant delay:

## **Minnesota Appellate Court Dismisses Claim by 54-year-old Man Alleging Sexual Abuse at Age 36 by Priest**

Ivers v. Church of St. William, 1998 Minn. App. LEXIS 1397, dated December 22, 1998.

Plaintiff, 54, claimed that a priest made inappropriate sexual advances on two occasions 16 years earlier when plaintiff and his wife sought marriage counseling from the priest. Plaintiff claims that he did not know whether his mental anguish was attributable to his marital problems and chemical dependency or was caused by the priest's actions until 1992. The appellate court, following a Minnesota Supreme Court ruling, Blackowiak v. Kemp, 546 N.W.2d 1 (Minn. 1996), affirmed dismissal of the claim, holding that as a matter of law one is "injured" if one is sexually abused. The Minnesota court applied an objective reasonable person inquiry.



### Good Advice

I read with great interest and agreement the article signed "Mother of a Retractor" in the December newsletter. After the break by our daughter we kept sending her greeting cards, post cards and letters, presents to our two young granddaughters. We also sent notes and FMS articles to our son-in-law for several years. We finally stopped after our daughter cut off her grandparents and threatened to cut off her in-laws if they continued to give us her addresses as she and her husband moved around the country.

This nightmare started abruptly in April 1990 and we have not been allowed to see any of my daughter's family in that time nor communicate in any way for most of the time. Being unable to communicate, we believe, means that this sad affair is unlikely to be resolved.

We are happy for those parents who have had a better outcome and encourage those who can to follow "Mother of a Retractor's" advice to keep loving communication open. We hope that 1999 will be a better year for us all.

□ A Waiting Dad

### Hugs for the Holidays?

After six years of little but negative contact, our daughter invited her accused father and me to meet with her six children at a shopping mall the Sunday before Christmas. Before leaving the children with us for the day, she gave both her father and me a loving hug. We are trying not to analyze this simple act of love; it spoke for itself. Thank goodness we never made retracting and apologizing a condition of reconciliation because this event defied words.

Although we consistently and unfailingly remembered the grandchild-

dren with cards and gifts for birthdays and holidays over these six years, at first we had no word that they had even been received. Later, simple acknowledgment was passed on, often through third parties. More recently, stamped, pre-addressed thank-you cards that we had enclosed with the gifts were returned.

For these six long years, the False Memory Syndrome Foundation has been there for us. What would we have done without the people who were willing to establish and maintain this organization? Where would we have found the information needed to explain this societal problem? Who would have challenged the mental health industry to investigate harmful therapeutic practices? Who would have developed the legal strategies to fight this phenomenon in the courts? What would we have done if there had been nowhere to call, no understanding voice to console and advise us? How many acts of desperation have been prevented because we were advised that sometimes being patient, doing nothing, and waiting would be most productive?

We will continue to support the Foundation, not only for the help we have received from it, but for those still out there "floundering in a sea of polluted memories."

□ A Mom

### Cult-Like Experience

These women entered a make-believe world where there was no one to rescue them from their plight. They are, in effect, no different than the followers of Jim Jones or David Koresh and would drink poisoned Kool-Aid or burn themselves to death had their therapists requested them to do so. This is why when speaking to my daughter I continue to refer to her experience as "what happened to you in therapy."

I suggest to parents that they

accept their children back unconditionally while protecting themselves from any further accusations, i.e., having them sleep elsewhere, never being alone with them on a one-to-one basis, etc. When their children do recover, they will have the rest of their lives to experience the pain of what was done to them and what they, in turn, inflicted upon innocent loved ones.

Even with the wonderful breakthrough we have had, it is difficult to recover from so many years of trauma and horror. I have never been party to something this bizarre and it is difficult to comprehend. I have not spoken with my daughter about our terrible suffering, but I am beginning to share some of our experience with her partner. After all, these RMT victims had a number of "enablers" who were supporting them in their insanity and I believe they are not entirely guiltless. My objective is not to make them suffer or even feel guilty. My objective is to have them understand the depth of the horror of it all and learn from this experience never to join in an accusation against anyone who has not been given a fair hearing or trial and been found guilty by reason of evidence and due process.

Mother of a Retractor.

### Cutting Off from Family Is What Cults Do

"People don't join cults, they join self-help groups, they join religious movements, they join political organizations, they join groups where they can be a part of something larger than themselves," says Deborah Layton, author of *Seductive Poison*, her story of joining the People's Temple in 1971 and escaping from Guyana in May 1978. In a review of this book, Diana Wright (Everett Herald, 11/8/98) says: "A must read for anyone thinking of joining an organization that believes their way is the only way or which suggests cutting off from the family and old friends."

## After the "Before and After" Letters

Our daughter was away from us for ten years, trapped in her false memories. We are most grateful for the help we received from FMSF through the difficult years and hope that the following letter will give other families hope.

Dear Mom and Dad,

As you have heard me say many times, Thanksgiving is my favorite holiday. I love my memories of our Thanksgivings. I think of warmth, the warm kitchen from all the cooking, the warmth in the dining room as we all gathered around the table and the warmth in my heart listening to Dad read that poem before we ate, and the warmth of feeling stuffed to the gills afterwards. I remember my uncle falling asleep in the living room and the plates of food we would take down to Aunt "M" because she couldn't come. What I liked most, I think, is that the day is meant for people simply to gather together and enjoy each other and be thankful. The last time we were together at Thanksgiving was the beginning of a long nightmare for us all, the beginning of my descent into those false memories.

I would love to be with you this year to celebrate the end of that false mess, to be with the two people who have taught me the most about love, trust, honor, integrity, forgiveness and faith. Every day I try to live up to the example you have set. I am so thankful to have you back in my life! I hope you have a warm-filled day and I look forward to talking to you to wish you a happy Thanksgiving.

All my love



## Don't Wallow in Old Sufferings

The December 1998 edition of the FMSF Newsletter contains these words from "a retractor," under the title "Reconciliation." They somehow touched me and provoked me at the same time, and I felt a need to respond.

I could not face the horrible thing I had done to my parents. Unfortunately, my mother initially made that a condition of my re-joining the family...I had to clear my father's name. I was not capable of doing that, because, of course, I had real problems at that point. It was easier for my self-esteem to pretend that I had been sexually abused by someone and it was still my parents' fault because they should have protected me.

Over the years, my mother and I talked first about every year, then every 6 to 8 months about trivial stuff, then were able to meet 7 years after the "incident." She implicitly dropped the condition that I needed to clear my father's name, which helped a lot. I wasn't as embarrassed and ashamed. And by that point I was correctly placing responsibility on the therapist's doorstep as opposed to blaming myself.

A Retractor

They aren't pretty words. "I'm too weak to do basic justice to my father, so it was unfortunate that my mother asked for that. The responsibility is the therapist's, not mine; I am victim, I need not blame myself."

I sincerely wish "a retractor" and her family strength and vision to move on past that standpoint some day soon; not to "blame" herself, but just to quit worrying about blame, embarrassment, apology, whatever—they're about the past, which is gone and immutable,

and it seems they're hindering the rebuilding of life in the here and now, where there's yet hope.

My own daughter has not yet faced what she and her therapists did to her parents—and especially to herself: her own sufferings, so tragically needless, were far worse—by adopting false beliefs of abuse. Though a part of me passionately longs to have my name cleared—I too once thought of vindication as an obvious prerequisite to reunion—I have not asked her to do that. Some day, I believe, it will come naturally, and almost painlessly—but that's not a priority now. What happened was our joint misfortune, and we shall overcome it together. Our goal is to relegate that era to the dead past, not to rake up and wallow in our old sufferings.

What she and I wish for and work for is that she build the strength to take charge of her life; to be victim no longer; to be the master of her fate, and the captain of her soul. It's a challenging undertaking, but she will someday win through and put victimhood behind her for ever. That's what matters.

For us all to abjure victimhood and expel it from our lives, rather than to focus on apology, is the path that can lead to reconciliation, and much more important, to true recovery. At least, it seems so to me.

A Dad



## Excerpts from Letter to Canadian Attorney General

*Editor's Comment:* During the summer of 1998 a movement took place in Canada to request that the Attorney General reexamine all

"I used to be terrified of going to sleep because my dreams were so awful but when I got out of therapy, I stopped having them. I suddenly had time to think about what I was saying. It was like coming out of a fog. I started to realize how different these "memories" were from my other memories. The problem was I couldn't admit my doubts. To me, it was better that it had happened and so Mum deserved what happened to her than to admit that it wasn't true and take responsibility for the terrible consequences of my accusations."

Sarah Dresser, quoted in *Mail on Sunday*, December 13, 1998

"Together again—the mother and daughter torn apart by therapy" by Fiona Barton

Canadian convictions based solely on "recovered memories." The following excerpts are from one letter that was sent to the Attorney General. The movement was successful and several cases are now under review.

"Any such [recovered memory] conviction is at best unsafe. It is highly likely that it is completely wrong. If...there are several dozen men in jail in Canada under such convictions, the amount of sheer injustice and tragedy is incalculable. An investigation is overdue, not premature.

"The issues of reliability and admissibility of evidence are for the courts. The problem is that for a time the courts were simply sandbagged by complainants' "recovered memories" and the experts who testified in support of them. For a number of years after "recovered" memories became fashionable and before their existence was questioned, there were solid criteria. They are encapsulated in the following questions and answers:

**Question 1**

Question: Why would she say these things if they weren't true?

Answer: Of course she wouldn't.

**Question 2**

Questions: Why wouldn't this abuser deny the abuse if he committed it?

Answer: Of course he would.

**Verdict: Guilty**

"Monitoring the case law will not comfort or relieve the wrongfully convicted. Nor will having departmental lawyers read files with a view to seeing whether there was enough evidence to convict. I would confidently expect every transcript to be packed with meticulous evidentiary detail—in one American case, for example, a daughter gave vivid and detailed evidence about abuse which took place over time in an attic which turned out to be non-existent—and to exude the complainant's passionate conviction of the truth of their evidence. In ordinary cases, all of this would provide a firm foundation for a conviction. I

would expect that in many cases the complainant's evidence will be supported by an expert whose expertise has been developed by seeing dozens of cases in which women (or men) in their twenties and thirties have "recovered" "repressed" memories. Judges and juries can be forgiven for not realizing that memory doesn't work that way; for not noticing that the expert had not made any contact with verifiable fact; and that 100 times zero is zero."

William Hurlburt, LL.D. (Non). Q.C.



**A New Family's First Meeting**

I'm sorry it has taken me so long to write. We enjoyed meeting all of the people in Toledo in October; I'm only sorry that we met under such terrible circumstances.

We have had some work to do since we got home. The first thing we found was the difficulty of changing our thinking from thinking we were dealing with a mean-spirited spoiled brat, to realizing what a terrible thing had been done to her. Our struggles to live with what had happened to us never included the thoughts that someone had preyed on a vulnerable mind at a time when they needed help the most. These last few weeks we have been trying to readjust our thinking and not be overwhelmed by the pain our daughter must be feeling.

We have done a lot of educating since the meeting. I ordered some of the FAQ fliers and sent them to various friends and family. We also have passed out many copies of *Smiling Through Tears*. Also, through all of this we have maintained a very close relationship with the State Police and our local Prosecutor's offices. We spent a morning with the victims advocate going over all of the information we have on the subject. They were very receptive and have asked us to forward anything else we think they should know and also to let them know

whenever there are TV news programs relating to the subject.

We have done what we can and perhaps it will save another family from going through this tragedy. We are deeply saddened—the Holidays loom. We pray daily for our family and for all of the families who are torn and shattered.

A Mom and Dad



**Response to November newsletter -  
August Piper**

Take your daughter by the hand and run.  
Run as fast as you can.

Run as far away as you can go.  
Run to the ends of the Earth if you have to.

Just run.

Away from every doctor, every hospital,  
every trained, licensed, certified counselor, therapist, psychologist, psychiatrist  
and trained professional.

Just run. Don't look back.

Don't stop to rest.

Run.

When you come to a safe place, wrap  
your arms around your daughter and just  
hold her and love her.

Love her and hold her and don't let go,  
but keep running.

Don't let her look back.

Don't let her reach out to "them."

Keep running.

Show her the trees, the flowers, the sun,  
moon and sky.

Play, laugh and cry with her.

Hold her and love her and

Keep running.

Don't let her reach back to her psychotherapist,  
her counselor, her trained experts.

Keep running forward, don't stop.

Run as hard as you can.

But if she wakes up one day and seeks  
the sunshine and smells the flowers,  
If she smiles at you with clear eyes and  
Wraps her arms around you and loves  
you,

Then and only then, can you stop running.

A Mom



### Have Your Check Your Library Recently?

Many retractors have reported that reading materials about FMS motivated their questioning of their false memories. For a retractor who is already questioning memories or who has decided that her memories are false, access to books about FMS is very important. Reading about FMS helps retractors in this group to understand their experience. Retractors have also said that it was a great comfort to know that they are not the only person to have had false memories.

Parents should realize that sometimes the little things can make such an enormous impact. Someone made sure that those books were on the shelf of this particular library. I know that this woman benefited from that person's actions. So did her parents. Perhaps others have too.

### Exploring the Internet

A new web site of interest to FMSF Newsletter readers:

<http://www.StopBadTherapy.com>

Useful information on this site includes:

- Phone numbers of professional regulatory boards in all 50 states.
- Links for e-mailing:  
American Psychiatric Association  
American Psychological Association  
American Medical Association  
National Association of Social Workers.
- Lists of online and printed resources: links, articles, books, videos.
- Ideas for taking action.

<http://www.FMSFonline.org>

is the address of the website that FMSF is developing. All past newsletters are now available

(The site has background information on the U.S.A. v Peterson.)

### Smiling through Tears

Pamela Freyd and Eleanor Goldstein

Upton Books • ISBN No 9-89777.125.7 • \$14.95

Over 125 cartoons by more than 65 cartoonists lead the way through a description of the complex web of psychological and social elements that have nurtured the recovered memory movement. Ask your bookstore to order the book or call 1-800-232-7477.

### Psychology Astray: Fallacies in Studies of "Repressed Memory" and Childhood Trauma

by Harrison G. Pope, Jr., M.D.

Upton Books

This is an indispensable guide for any person who wants or needs to understand the research claims about recovered memories. A review by Stuart Sutherland in the prestigious *Nature* magazine (July 17, 1997) says that the book is a "model of clear thinking and clear exposition." The book is an outgrowth of the "Focus on Science" columns that have appeared in this newsletter.

The Foundation gratefully acknowledges the contribution made in memory of Rose Neuman by her friends in Florida.

We are looking for other families whose children participated in the program at Evanston Hospital, Evanston, IL. Confidentiality guaranteed. Please call 847-885-9515.

### AREA CODE CHANGE?

PLEASE HELP US SAVE TIME TRYING TO CALL YOU!

**IF YOUR AREA CODE HAS CHANGED, PLEASE LET US KNOW.**

We would like to contact others whose adult children have had experience with the Michigan Counseling Center (Ann Arbor). Please forward your message to SHO care of the FMS Foundation.

### ADDRESS CHANGE and SNOWBIRD ALERT!

PLEASE REMEMBER,  
WE NEED YOUR ADDRESS  
CHANGE EVERY TIME YOU MOVE.

Any FMSF parents or retractors visiting Champaign-Urbana, Illinois are invited to stay free at our house. Carole Ann and David P. Hunter, 2511 Bedford Drive, Champaign, IL 61820  
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# **Joel Hungerford v. Susan L. Jones,**

## **Supreme Court Of New Hampshire**

No. 97-657, 1998 N.H. LEXIS 94

December 18, 1998, Decided

OPINION: BRODERICK, J. Pursuant to Supreme Court Rule 34, the United States District Court for the District of New Hampshire (McAuliffe, J.) certified to us the following questions of law:

1. Does a mental health care provider owe a legal duty to the father of an adult patient to diagnose and treat the patient with the requisite skill and competence of the profession when the diagnosis is that the father sexually abused or assaulted the patient?
2. Does a mental health care provider owe a duty to act with reasonable care to avoid foreseeable harm to the father of an adult patient resulting from treatment or other action taken in relation to mental health conditions arising from the diagnosis of past sexual abuse or assault by said father?

We respond affirmatively to both questions with the limitations expressed below.

### **I.**

Because these issues arise in the context of a motion to dismiss, we assume the truth of the factual allegations recited by the plaintiff in his complaint and by the district court in its certification order, and construe all inferences in the light most favorable to the plaintiff.

In August or September 1992, defendant Susan L. Jones began treating Laura B., who was then in her mid-twenties. Jones, a social worker, had limited experience in treating patients allegedly afflicted with repressed memories of sexual assault. In fact, her only training in the area consisted of a lecture on memory retrieval techniques that she attended during a weekend symposium. Nevertheless, Jones represented to Laura that she was a qualified and experienced mental health therapist in the treatment of problems associated with incest and sexual abuse. She failed to inform Laura of her limited experience and training in memory retrieval or explain the controversy in the mental health community regarding the reliability and validity of the phenomenon and techniques she was employing, including the potential for implanting false memories. In addition, Jones did not discuss other treatment options with Laura.

Laura had no knowledge or memory of being sexually abused by her father when she began therapy. During the course of therapy, however, Jones led Laura to believe that her nightmares and anxiety attacks were actually "flashbacks" and "recovered memories" of episodes of sexual assault and abuse by her father. Jones also persuaded Laura that her physical sensations and pain were "body memories" indicative of memory repression or traumatic amnesia involving incidents of sexual abuse. Jones concluded that Laura's psychological problems, including her difficulties with intimate relationships, were caused by her father's sexual abuse.

Jones' repressed memory therapy included a memory retrieval technique she referred to as "visualization" or "imagery," in which she led Laura into a self-induced trance to uncover allegedly lost memories of sexual abuse. As a result, Jones caused Laura to "recall" five episodes of sexual assault by her father. The alleged episodes first began when Laura was five years old and ended only two nights before her wedding. Jones never consulted any mental health professionals for assistance in Laura's therapy.

After learning of his daughter's accusations, plaintiff Joel Hungerford authorized his therapist to communicate with Jones in an effort to help his daughter realize that her "memories" were false. In the face of their communications, Jones remained firm in her diagnosis.

At Jones' direction, Laura ceased all contact with her father in October 1992. The following spring, Jones' continuing direction and support led Laura to file a complaint against her father for aggravated felonious sexual assault with the Amherst Police Department (police). Jones contacted the police to validate the truth of Laura's recovered memories, convey her belief that Laura was assaulted by Hungerford, and encourage his prosecution as a means of "empowering" her



patient. Jones also met with the Hillsborough County Attorney to further assist in the prosecution.

Jones' actions in therapy and with the police led to indictments against Hungerford charging two counts of aggravated felonious sexual assault. In May 1995, the Superior Court (Groff, J.) ruled that Laura's "memories" of assault recovered during therapy were not admissible at trial because they were not scientifically reliable. This court affirmed. See State v. Hungerford, 142 N.H. 110, 134, 697 A.2d 916, 930 (1997).

Thereafter, Hungerford filed suit against Jones in the federal district court alleging that Jones' negligent treatment and diagnosis of his daughter resulted in false accusations of sexual abuse and criminal charges. Jones moved to dismiss the complaint, asserting that she owed Hungerford no duty of care. The district court then certified two questions to this court asking whether, and to what extent, a mental health care provider (therapist) owes a duty of care to the father of an adult patient when he is identified as the perpetrator of sexual abuse in the course of the patient's therapy. Both questions present issues of first impression.

## II.

"Whether a duty exists in a particular case is a question of law." This court has recognized that a professional owes a duty of care to third parties in limited circumstances. In so doing, we reasoned that the existence of a duty does not arise solely from the relationship between the parties, but also from the need for "protection against reasonably foreseeable harm." While "not every risk [of harm] that might be foreseen gives rise to a duty ...a duty arises [if] the likelihood and magnitude of the risk perceived is such that the conduct is unreasonably dangerous." Thus, parties owe a duty to those foreseeably endangered by their conduct with respect to those risks whose likelihood and magnitude make the conduct unreasonably dangerous.

When determining whether a duty is owed, we examine the societal interest involved, the severity of the risk, the likelihood of occurrence, the relationship between the parties, and the burden upon the defendant.

Jurisdictions which have considered a therapist's duty to nonpatient third parties have commonly recognized the social utility in detecting and eradicating sexual abuse. We agree and further recognize the critical role of mental health professionals in identifying sexual abuse. Protecting children from such abuse and promoting healing for abuse survivors are important goals. We must, however, be vigilant in balancing these critical societal interests against the need to protect parents, families, and society from false accusations of sexual abuse. Though not a simple task, such a delicate balance must be achieved in light of the potentially devastating consequences stemming from misdiagnosis.

It is indisputable that "being labeled a child abuser [is] one of the most loathsome labels in society" and most often results in grave physical, emotional, professional, and personal ramifications. This is particularly so where a parent has been identified as the perpetrator. Even when such an accusation is proven to be false, it is unlikely that social stigma, damage to personal relationships, and emotional turmoil can be avoided. In fact, the harm caused by misdiagnosis often extends beyond the accused parent and devastates the entire family. Society also suffers because false accusations cast doubt on true claims of abuse, and thus undermine valuable efforts to identify and eradicate sexual abuse.

The severity and likelihood of harm is compelling and clearly foreseeable when false accusations of sexual abuse arise from misdiagnosis. As explained below, the potential for harm is magnified when, as alleged in this case: (1) the accused is the patient's father; (2) the therapist lacks appropriate experience and qualifications; (3) the therapist uses a psychological phenomenon or technique not generally accepted in the mental health community; and (4) the accusations of abuse are made public.

First, due to the prevalence of intrafamily sexual abuse, family members are more likely victims of false accusations than nonfamily members.

Second, the likelihood of harm is considerable where an unqualified therapist, e.g., one lacking in appropriate training or experience, attempts a diagnosis.

Third, the prospect of misdiagnosis and resultant false accusations is enhanced where a therapist bases a diagnosis on a psychological phenomenon or technique not generally accepted in the mental health community. The concept of repressed memories of sexual abuse is extremely controversial. Moreover, the various techniques used by therapists to "recover" allegedly repressed memories of past sexual abuse are also controversial and have been criticized as being sug-

gestive and resulting in false memories.

Finally, the likelihood of harm to an accused parent is exponentially compounded when treating therapists take public action based on false accusations of sexual abuse or encourage their patients to do so. Public action encompasses any effort to make the allegations common knowledge in the community. In this situation, the foreseeability of harm is so great that public policy weighs in favor of imposing on the therapist a duty of care to the accused parent throughout the therapeutic process. We recognize, however, that there are circumstances in which the therapist is immune from liability.

### III.

Several jurisdictions have struggled with determining whether, and under what circumstances, therapists owe a duty to third parties, and have reached differing conclusions based on competing public policy considerations. Those courts refusing to recognize a duty of care commonly reason that to do so "would carry with it the impermissible risk of discouraging [therapists] ... from performing sexual abuse evaluations of children altogether, out of a fear of liability to the very persons whose conduct they may implicate." This reasoning, however, overlooks the fact that the standard of care by which a therapist's conduct is measured is not heightened. Our holding today imposes "no more than what a therapist is already bound to provide—a competent and carefully considered professional judgment." Althaus v. Cohen, 710 A.2d 1147, 1157 (Pa. Super. Ct. 1998.)

We recognize that in most circumstances, the balance between protecting children from sexual abuse and guarding against false accusations is best struck by permitting the therapist broad latitude in ferreting out signs or symptoms of past sexual abuse without fear of liability to the accused. Where the alleged perpetrator is the patient's parent and the accusation is made public by, or at the encouragement of, the therapist, however, the circle of immunity can be justifiably diminished. In fact, a therapist's diagnosis of sexual abuse that identifies a perpetrator inherently consists of a conclusive determination concerning the suspected abuser as well as the patient, regardless of the accused's involvement in the therapy process. Because the therapist is in the best position to avoid harm to the accused parent and is solely responsible for the treatment procedure, an accused parent should have the right to reasonably expect that a determination of sexual abuse, "touching him or her as profoundly as it will, will be carefully made," S. v. Child & Adolescent Treatment, 614 N.Y.S.2d at 666, in those cases where the diagnosis is publicized.

### IV.

Imposing a duty of care on therapists who elect to publicize accusations of sexual abuse against parents, or who encourage patients to do so, should not unreasonably inhibit sexual abuse diagnosis or therapy. Recognizing such a duty where parents are implicated, however, should result in greater protection for parents and families from unqualified or unaccepted therapeutic diagnoses. While imposition of this duty may impair societal efforts to bring some sexual abusers to justice, we recognize its need due to the increased foreseeability and devastating consequences of publicized false accusations against parents. "No social utility can be derived from shielding therapists who make cavalier diagnoses that have profound detrimental effects on the lives of the accused and their family." Althaus, 710 A.2d at 1157.

Accordingly, in response to the district court's questions, we hold that a therapist owes an accused parent a duty of care in the diagnosis and treatment of an adult patient for sexual abuse where the therapist or the patient, acting on the encouragement, recommendation, or instruction of the therapist, takes public action concerning the accusation. In such instances, the social utility of detecting and punishing sexual abusers and maintaining the breadth of treatment choices for patients is outweighed by the substantial risk of severe harm to falsely accused parents, the family unit, and society. The duty of care to the accused parent is breached by the therapist when the publicized misdiagnosis results from (1) use of psychological phenomena or techniques not generally accepted in the mental health community, or (2) lack of professional qualification.

Accordingly, we answer the certified questions in the affirmative with the limitations outlined herein. We offer no opinion concerning whether the scope of the duty may include third parties other than a patient's parents.



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